

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review --) CS Docket No. 98-54
Part 76 - Cable Television Service)
Pleading and Complaint Rules)

COMMENTS OF TELE-COMMUNICATIONS, INC.

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June 22, 1998

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Tele-Communications, Inc. ("TCI") hereby files its Comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

TCI fully supports the Commission's efforts to streamline the cable pleading and complaint procedures by, among other things, eliminating unnecessary requirements and increasing the level of uniformity across various Part 76 rules. TCI agrees with the Commission that such streamlining efforts will "likely serve the public interest by lessening confusion and reducing the regulatory

¹ In the Matter of 1998 Biennial Regulatory Review -- Part 76 - Cable Television Service Pleading and Complaint Rules, Notice of Proposed Rulemaking, CS Docket No. 98-54, FCC 98-68 (released April 22, 1998) ("Notice").

burden on franchising authorities, cable operators, and other interested persons."²

To assist the Cable Services Bureau ("Bureau") in its efforts to streamline the cable procedures, TCI compiled a chart, attached as Exhibit A, that summarizes these procedures.³ In addition, TCI proposes below five specific changes to the cable procedures that are designed to make these procedures more efficient, consistent, and practical. Specifically, TCI respectfully urges the Commission to:

- Begin the calculation of the time to respond to any cable complaint/petition that is placed on public notice on the date following the public notice date;
- Revise the cable public notice format to provide parties with additional relevant information, such as the named defendants/respondents and the date on which responses are due;
- Extend to all cable complaint procedures, including leased access, the requirement that a party provide cable defendants with at least 10 days' written notice prior to filing a complaint with the Commission;
- Streamline the resolution of appeals of local cable rate orders by instituting a status conference mechanism similar to that already implemented in the program access and program carriage contexts, which would allow Bureau staff to work with the cable operator and local franchising authority ("LFA") to simplify or narrow the issues, obtain stipulations among the parties, and/or to settle any or all aspects of a local rate appeal; and
- Streamline the Bureau's processing of effective competition petitions in cases where a cable operator's petition is unopposed by either: 1) requiring that decisions on such unopposed petitions be issued within

² Id. at ¶ 2.

³ See Exhibit A. Where necessary, the chart incorporates cross-references to relevant rules in Part 1 of the Commission's rules.

30 days of the date oppositions would have been due; or
2) requiring that rate regulation on the petitioning
cable system be stayed pending the issuance of a Bureau
decision, subject to refunds if the Bureau ultimately
denies the petition.

II. TCI'S PROPOSALS TO STREAMLINE THE CABLE COMPLAINT AND PETITION PROCEDURES.

A. The Time to Respond to All Cable Complaints and Petitions That Are Placed on Public Notice Should Begin on the Date Following the Public Notice Date.

The Bureau currently places on public notice many types of cable complaints and petitions, including program access, program carriage, must-carry, and leased access complaints, as well as petitions for special relief. However, even though such complaints/petitions are public noticed in the normal course, the date that triggers the timing for filing responses to such cable complaints and petitions varies widely. For example, the time period for responding to a petition for special relief commences on the date after the Commission's issuance of a public notice.⁴ By contrast, in program access proceedings, the service of the complaint on the defendant triggers the time period for responding.⁵ Yet another date, the FCC filing date, triggers the time period for responding to a leased access complaint.⁶ In many cases, these discrepancies create unnecessary confusion as to when

⁴ See 47 C.F.R. § 76.7(d).

⁵ See id. § 76.1003(d)(1).

⁶ See id. § 76.975(e).

responses are due and, therefore, increase the number of requests for extensions of time filed with the Bureau.

To eliminate these unnecessary procedural discrepancies, TCI urges the Bureau to begin the time period for filing responses on the date following the public notice date. Such an approach will minimize confusion and reduce the need for the filing of requests for extensions of time. This revised uniform approach will also provide all defendants/respondents with the assigned case number before responses are due.⁷ All parties, therefore, should be required to reference this case number on all pleadings filed in the proceeding, thereby facilitating the ability of the Bureau to file and maintain all relevant documents in a central location which may then be easily accessed by all parties and Bureau staff.⁸

⁷ Under the current method of calculating response dates (e.g., for leased access and program access complaints), it is possible that a response will be due even before the Bureau places the complaint/petition on public notice, in which case the defendant/respondent would not have the case number available at the time it files its response.

⁸ TCI is not suggesting that the Commission expand the types of complaints/petitions that are placed on public notice. In fact, in some cases, it makes more sense not to use the public notice process. CPST rate complaints are a good example for two reasons. First, requiring that the relatively high volume of CPST rate complaints be placed on public notice would impose a unique administrative burden on the Bureau. Second, such an increased burden is unnecessary in light of existing Commission requirements. If the LFA intends to file a CPST rate complaint, it must notify the cable operator and give the operator 30 days to respond. 47 C.F.R. § 76.1402(b). Moreover, it must serve a copy of any complaint on the cable operator. See id. § 76.951(b)(6). Because only an LFA may file a CPST rate complaint, these procedures ensure that a cable operator receives adequate notice of such a complaint. However, because certain LFAs do not serve TCI with CPST rate complaints, the Commission should remind LFAs of their obligation under these rules and explain that the best way to minimize

(continued ...)

B. The Cable Public Notice Format Should Be Revised to Provide Parties with Additional Relevant Information.

The Commission's current cable public notice format includes:

1) assigned case number; 2) petitioner's name; 3) community(ies) involved; and 4) any specific "code" identifying the system (such as a cable system's CUID number).⁹ One critical piece of information that is missing from the existing cable public notice format, however, is the name of the defendant or respondent. The absence of this information often makes it difficult for parties to discern on a timely basis whether they are the subject of a complaint before the Commission.¹⁰

In order to provide more accurate information to all parties involved and to further streamline the cable complaint process, TCI urges the Commission to revise the existing cable public notice format to include the following: 1) assigned case number; 2) type of complaint/petition; 3) name of the complainant/petitioner; 4) name of the defendant/respondent; 5) affected community(ies) in which the defendant/respondent operates; 6) any relevant cable system identifier (such as CUID number); and 7) the date on which

(... continued)

delay with CPST rate complaints is to ensure that the operator receives a timely served copy of any complaint.

⁹ See Exhibit B.

¹⁰ This is true even though the Commission's procedural rules typically require defendant cable operators to be served with a copy of any filed complaint. In many cases, the complainant serves the wrong individual, or the complaint is lost in the delivery process, in which case the defendant does not learn about the complaint until well after it has been filed.

oppositions or responses are due. A sample of this proposed revision to the cable public notice format is included in Exhibit B.

This revised format offers several benefits. Specifically, it would: 1) provide a clearer picture of the nature of the cable complaint/petition; 2) better inform defendants and their attorneys that they are implicated by the complaint/petition; 3) make it easier for the Bureau and all interested parties to track the complaint/petition through the Commission process; and 4) reduce confusion about when responses, oppositions, or comments are due, thereby minimizing the number of calls to Commission staff on this issue, as well as requests for extensions of time.

C. A Party Should Be Required to Provide Defendants with at Least 10 Days' Notice Prior to Filing Any Cable Complaint or Adverse Petition.

Several cable pleading and complaint rules -- such as those governing program access complaints,¹¹ program carriage complaints,¹² and must-carry complaints¹³ -- require a complainant to notify the defendant in writing prior to filing a complaint with the Commission. TCI urges the Commission to extend a 10-day advance notice requirement to all cable complaints and petitions against a cable operator, including leased access complaints¹⁴ and

¹¹ See 47 C.F.R. § 76.1003(a) (10-day advance notice requirement).

¹² See id. § 76.1302(a) (10-day advance notice requirement).

¹³ See id. §§ 76.7(c)(4)(i), 76.61(a)(1) (30-day advance notice requirement).

¹⁴ See id. § 76.975.

LFA petitions for certification.¹⁵ Extension of this advance notice requirement to such additional scenarios will serve all parties involved, including the Bureau, by enhancing the possibility of settlement by the private parties prior to requiring the Commission to dedicate resources.

D. The Commission Should Institute a Status Conference Mechanism in the Local Cable Rate Appeal Context, Similar to the One in the Program Access and Program Carriage Contexts, in Order to Streamline the Processing and Resolution of These Appeals.

One of the most time-consuming and costly cable procedures for both private parties and Bureau staff alike are the procedures relating to appeals of local cable rate orders. There are currently hundreds of appeals of local cable rate orders pending at the Bureau. TCI estimates that it alone has over 200 such appeals pending. Moreover, in many cases, these appeals have been pending for several years. TCI, for example, has rate appeals that have been pending at the Bureau for over four years.

Three of the principal causes of this backlog of local rate appeals are: 1) the limited Bureau staff and budget available to process these appeals; 2) the difficulties faced in analyzing the often complex issues raised in these appeals solely on the basis of

¹⁵ See *id.* § 76.910. For example, if a cable operator is subject to effective competition, requiring an LFA to provide notice to the cable operator prior to filing for certification would allow the cable operator to make such a showing to the LFA and, therefore, possibly eliminate the need for Commission involvement at all. At the very least, such a pre-certification notice requirement would focus the issues that the parties later address before the Commission, thereby streamlining Commission review.

the written pleadings submitted by the parties; and 3) the inclusion within various appeals of particular issues that the Bureau is not yet able to address, for example because the Commission has not yet ruled on an underlying policy question that must be resolved prior to such Bureau action.

In order to address the causes of these delays and to streamline significantly the rate appeal process, TCI strongly urges the Commission to institute a status conference mechanism in the local rate appeal context similar to the one already implemented by the Commission in the program access and program carriage contexts.¹⁶ A status conference mechanism would allow Bureau staff to work with cable operators and LFAs regarding local rate appeals in order to:

- better understand the issues raised on appeal;
- simplify or narrow the issues;
- bifurcate any issues that are either very complex or that cannot yet be resolved by the Bureau, perhaps because it is awaiting guidance from the Commission on a relevant underlying policy question;
- obtain admissions of fact or stipulations between the parties as to any or all of the matters in controversy;
- settle any or all of the matters in controversy by agreement of the parties; and
- consider any other alternatives for expediting resolution of the appeal.¹⁷

¹⁶ See 47 C.F.R. §§ 76.1003(j), 76.1302(j).

¹⁷ Such a procedure is not required for CPST rate complaints because, under the revised, post-1996 Act rules, the Commission is
(continued ...)

This procedure would be particularly effective in the local rate appeal context because in many cases an identical issue is raised in multiple appeals across the country by the same cable operator. If the Bureau is able through a status conference to resolve such an issue -- for example, by convincing the operator to withdraw or settle the issue in all such appeals -- this will reduce dramatically the workload for Bureau staff, not to mention the time and costs expended by all parties to pursue the issue through multiple, full-blown adjudications and subsequent appeals.

TCI attaches to these comments in Exhibit C a proposed rule that would implement this status conference procedure within the local rate appeal context. Because this proposed procedure is nearly identical to the status conference procedure used in the program access and program carriage contexts, the Bureau is already familiar with its operational aspects and could easily implement it to reduce the backlog of existing rate appeals and to streamline the processing of future rate appeals.¹⁸

(... continued)

required to resolve all CPST rate cases within 90 days of the filing of the complaint by the LFA. See 47 U.S.C. § 543(c)(3).

¹⁸ TCI drafted this proposed rule to encompass not only actual local rate appeals but potential local rate appeals that the cable operator is contemplating filing. In many cases, if the operator and LFA could discuss various issues in a local rate order with the Bureau staff before a rate appeal is filed with the Commission, such discussions could prevent the filing of the appeal altogether, or, at the very least, narrow the number and scope of the issues raised in the appeal. Because this would also significantly streamline the local rate appeal process, TCI urges the Commission to authorize such pre-appeal status conferences.

- E. In Cases Where No Opposition Is Filed on an Effective Competition Petition, the Commission Should Either:**
1) Require the Bureau to Issue a Decision Within 30 Days; or 2) Stay All Rate Regulation of the Petitioning Cable System Pending the Issuance of a Bureau Decision, Subject to Refunds if the Petition Is Ultimately Denied.

Section 76.906 of the Commission's rules imposes a presumption against a finding of effective competition. The Commission adopted this presumption principally in order to create a "simple, streamlined process for certification of local authorities, and to expeditiously implement the rate regulation provisions of the [1992 Cable] Act."¹⁹ Although this presumption may have helped to achieve these objectives, increasingly it has also contravened Congress' intent in the 1992 Cable Act by maintaining rate regulation on certain cable systems long after such systems have become subject to effective competition.

For example, in many cases, TCI and other cable operators have filed pleadings containing extensive analyses and supporting data demonstrating that a particular cable system is subject to effective competition. Even in cases where such petitions are unopposed by any party, including the LFA, the presumption against effective competition has caused the cable operator to continue to be subject to rate regulation until the Bureau issues a decision finding that effective competition exists. Because there is no deadline by which the Bureau must issue such a decision, it often is many months before the cable operator receives an answer and may

¹⁹ First Rate Order, 8 F.C.C.R. 5631, at ¶ 41 (1993).

begin to respond to the competition it is facing without the constraints imposed by rate regulation.²⁰

Delayed rulings on effective competition petitions, particularly where such petitions are unopposed, cannot be squared with congressional intent in the 1992 Cable Act that cable operators have "a statutory right to be free of rate regulation if effective competition exists."²¹ These delays also are inconsistent with the statement by the Commission in the First Rate Order that the procedures it adopted "w[ould] ensure . . . that systems subject to effective competition are not subjected to rate regulation simply by operation of the presumption [against effective competition]."²²

In order to streamline the cable procedures in this area, TCI proposes that where no opposition is filed against a cable operator's effective competition petition, the Bureau should be required to issue a decision no later than 30 days after the date

²⁰ For example, on September 8, 1997, TCI filed with the Commission an effective competition petition under the municipal overbuild test, 47 U.S.C. § 543(l)(1)(C), for its Harlan, Iowa system. Even though this TCI system clearly meets the municipal overbuild test, and even though no oppositions were filed, TCI has not received a ruling on its petition to date, over nine months after filing and over eight months after oppositions were due. During this time, TCI's Harlan cable system has continued to be subject to rate regulation and is thereby limited in its potential competitive responses to the municipal overbuilder. See, e.g., "Operators Facing Local Quandaries, A Small Iowa Town Has Big Cable Ideas," Cable World, May 4, 1998, at 1 (indicating that the municipal overbuilder in Harlan, Iowa has taken about two-thirds of TCI's customers).

²¹ First Rate Order, 8 F.C.C.R. at 5669 ¶ 42.

²² Id.

on which oppositions would have been due. This proposal is reasonable particularly in light of the fact that the Commission already requires an LFA to issue decisions on effective competition petitions that cable operators file with the LFA within 30 days of the completion of the pleading cycle, even in cases where the petition is opposed.²³

To further assist the Bureau's ability to meet this 30-day deadline, the Commission could clarify that the Bureau will not issue a written analysis in cases where the cable operator's unopposed petition is approved. In such cases, the cable operator's petition automatically would be deemed approved 30 days after oppositions are due.²⁴ Alternatively, the Bureau could limit any written decision approving a cable operator's unopposed petition to any aspects of the petition with which the Bureau disagrees or which it deems to warrant further explication in order to provide guidance for future petitions.

²³ See 47 C.F.R. § 76.915(b).

²⁴ There is ample Commission precedent for such an automatic approval process. For example, any request for forbearance under Section 10 of the Communications Act "shall be deemed granted if the Commission does not deny the petition ... within one year." 47 U.S.C. § 160(c). Similarly, a common carrier's application to supplement its facilities is deemed granted if the Commission does not act within 21 days. See 47 C.F.R. § 63.03(d); see also id. § 63.71 (application of a non-dominant common carrier seeking to discontinue, reduce, or impair its service is deemed granted after 31 days if no Commission action); In the Matter of Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications, Report and Order, 59 Rad. Reg. 2d (P&F) 982, at ¶ 48 (1986) (waiver applications of domestic telecommunications carriers to modify their agreements with foreign carriers are deemed granted after 60 days if no Commission action).

If the Commission is disinclined to adopt such a 30-day deadline for the issuance of decisions on unopposed effective competition petitions, TCI proposes in the alternative that where a cable operator's effective competition petition is unopposed that all rate regulation of the petitioning cable system be stayed pending the issuance of a Bureau decision. If the Bureau ultimately denies the petition, the cable operator could then be required to refund any rates or portion of rates above the permitted tier charge which were collected from the date the operator implements a prospective rate reduction back in time one year. This alternative proposal is precisely the approach the Commission has already implemented where a cable operator's petition for effective competition is filed along with a petition for reconsideration of an LFA's certification.²⁵

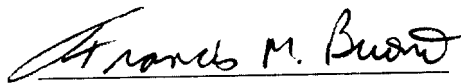
²⁵ See 47 C.F.R. § 76.911(c). Of course, to discourage the filing of frivolous oppositions to effective competition petitions simply to avoid triggering either of the above procedures, the Commission should expressly prohibit such frivolous oppositions, just as it prohibits the filing of frivolous filings of petitions for reconsideration alleging effective competition. See *id.* § 76.911(d) (the filing of such frivolous petitions may subject a party to forfeitures).

III. CONCLUSION

For the foregoing reasons, TCI respectfully urges the Commission to streamline the Part 76 cable pleading and complaint procedures consistent with the comments herein.

Respectfully submitted,

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EXHIBIT A

Summary of Cable Petition/Complaint Procedures

Type of Petition/Rule Number	Purpose of Rule	Time Period to File a Complaint/ Petition	Pleading Cycle	Pleading and Service Requirements	Affidavit and Evidentiary Requirements	Burden of Proof	Special Requirements/Other Comments
§ 76.7(a)(1) Petitions for Special Relief	This petition may be filed for relief from any of the FCC's rules.	Petitions may be filed at any time.	1) Petitioner files. 2) Comments & oppositions may be filed within 20 days after the date of the <u>public notice</u> of the petition. For good cause, the FCC can alter the time period. 3) Petitioner can file a reply to comments or oppositions within 10 days of submission. For good cause, FCC can shorten period.	1) Petition must state relief requested, fully & precisely all facts & considerations relied on to demonstrate the need for relief & that it is in the public interest. 2) Petition may be filed informally but must be accompanied by a certificate that it was served on affected entity. Service is effected pursuant to § 1.47, <u>see</u> "Special Requirements/ Other Comments" column. 3) Original and two copies and all subsequent pleadings must be filed w/ FCC. 4) Comments & oppositions must be served on petitioner and all persons listed in petitioner's certificate of service. 5) Petitioner's reply	1) Factual allegations must be supported by affidavit of person w/ actual knowledge. 2) Petition must list all steps taken by parties to resolve the dispute. 3) Comments & oppositions must contain detailed and full showing, supported by affidavit, of any facts or considerations relied on. 4) Replies are subject to same requirements.	Petitioner	Section 1.47 requires: 1) Service must be made on or before the day of filing; 2) Commission counsel that formally participates in any proceeding must be served in the same manner as others; 3) Service can be made by delivering or mailing a copy to the last known address of the party, his attorney, or other authorized agent. If a party is represented by an attorney of record, service must be made on the attorney; 4) Delivery in #3 means: a) handing it to the party, or his agent; b) leaving it with a clerk or person in charge of the office of the person being served; c) leaving it in a conspicuous place if no one is in charge of the office; and d) leaving it at the person's dwelling with a person of suitable age and discretion that resides there; 5) Service by mail is

Type of Petition/Rule Number	Purpose of Rule	Time Period to File a Complaint/Petition	Pleading Cycle	Pleading and Service Requirements	Affidavit and Evidentiary Requirements	Burden of Proof	Special Requirements/Other Comments
				must be served on all parties filing pleadings.			complete upon mailing; 6) Proof of service showing the time and manner must be filed before action is taken.
§ 76.7(a)(2) Must-Carry Complaints	Complaint is filed to allege violation of must-carry rules § 76.61.	1) Complaints alleging general violations may be filed at any time. 2) Complaints regarding carriage of local commercial TV stations must be filed within 60 days of: a) denial of carriage by cable operator ("cable op") or request for channel position; or b) failure of cable op to respond to notice within time period. 3) Carriage-demand petitions cannot be filed until after a demand for carriage has been made and the cable op had 30 days to reply.	1) Complainant files. 2) Comments & Oppositions may be filed within 20 days after the date of the <u>public notice</u> of the petition. For good cause, the FCC can alter the time period. 3) Complainant can file a reply within 10 days of submission of comments or oppositions. For good cause, FCC can shorten period.	1) Complaint must state relief requested, fully & precisely all facts & considerations relied on to demonstrate the need for relief & that it is in the public interest. 2) Complaint may be filed informally but must be accompanied by a certificate that it was served on affected entity. Service is effected pursuant to § 1.47. See "Special Requirements/ Other Comments" column of § 76.7(a)(1), <u>supra</u> , at 1. 3) Original and two copies and all subsequent pleadings must be filed w/ FCC. 4) Comments & oppositions must be served on	1) Factual allegations must be supported by affidavit of person w/ actual knowledge. 2) Complaint must allege specifically the manner in which cable op failed to meet its obligations and the basis for such allegations. 3) Complaint must list all steps taken by parties to resolve the dispute. 4) Comments & oppositions must contain detailed and full showing, supported by affidavit, of any facts or considerations relied on. 5) Replies are subject to same requirements. 6) Carriage complaints from commercial broadcasters must include a copy of the notice and cable op's response.	Petitioner	1) Opposition period begins with issuance of public notice. 2) Must provide notice and an opportunity to respond prior to filing carriage-demand complaint

Type of Petition/Rule Number	Purpose of Rule	Time Period to File a Complaint/ Petition	Pleading Cycle	Pleading and Service Requirements	Affidavit and Evidentiary Requirements	Burden of Proof	Special Requirements/Other Comments
				complainant and all persons listed in complainant's certificate of service. 5) Complainant's reply must be served on all parties filing pleadings.			
§ 76.9 Petition for Order to Show Cause or to Initiate Forfeiture	Petition demands that cable op show cause as to why it is violating an FCC order or rule. Petition to initiate a forfeiture requests FCC to assess a forfeiture against a cable op for a violation.	Petitions may be filed at any time.	1) Petitioner files. 2) Comments and oppositions may be filed within 30 days of petition's <u>filing date</u> . 3) Petitioner may file a reply to oppositions or comments within 20 days of the filing deadline for the comments and oppositions. 4) For good cause, the FCC can order shorter time periods.	1) Petition may be filed informally, or FCC can initiate it on its own motion, <u>see § 76.9 Note</u> . 2) Petition must state fully and precisely all pertinent facts and considerations relied upon to support issuance of an order. 3) Must be accompanied by a certificate of service indicating service on any interested person who may be directly affected. Service is effected pursuant to § 1.47. <u>See "Special Requirements/ Other Comments" column § 76.7(a)(1), <i>supra</i></u> .	1) Factual allegations must be supported by affidavit and exhibits verified. 2) Comments and oppositions must contain a detailed full showing, supported by affidavit, of any facts or circumstances relied on. 3) Replies are subject to the same requirement.	Petitioner initially must show violation of order or rule.	

Type of Petition/Rule Number	Purpose of Rule	Time Period to File a Complaint/ Petition	Pleading Cycle	Pleading and Service Requirements	Affidavit and Evidentiary Requirements	Burden of Proof	Special Requirements/Other Comments
				at 1. 4) Original and two copies and all subsequent pleadings must be filed w/ FCC. 5) Comments & oppositions must be served on complainant and all persons listed in complainant's certificate of service. 6) Complainant's reply must be served on all parties filing pleadings.			
§ 76.29 Request for Special Temporary Authority to Operate	Cable op can request special temporary authority to operate a system that is not authorized by FCC rules. Authority can be granted for up to 90 days and extended an additional 90 days.	Petitions may be filed at any time but must be filed at least 10 days prior to the date of commencement of proposed action. If a delay in filing occurs, a reason for the delay must be submitted.	§ 76.29 does not describe a pleading cycle. However, the general procedures under § 1.45 apply: 1) Petitioner files. 2) Oppositions may be filed within 7 days after the original pleading is <u>filed</u> . 3) No reply is permitted.	1) Request can be informal. 2) Request must contain the name and address of the applicant cable system, the community, type of operation, date of commencement, and duration of the time needed for special authority. 3) In addition, the petition must state all pertinent facts needed to demonstrate a need for special authority		Cable op/ petitioner	§ 76.29 does not provide much guidance as to pleading cycle, pleading requirements, or opposition requirements. This would seem to indicate that the FCC's general rules apply.

Type of Petition/Rule Number	Purpose of Rule	Time Period to File a Complaint/ Petition	Pleading Cycle	Pleading and Service Requirements	Affidavit and Evidentiary Requirements	Burden of Proof	Special Requirements/Other Comments
				and to support a finding that it is in the public interest. 4) Must be served on all interested parties. Service is effected pursuant to § 1.47. See "Special Requirements/Other Comments" column of § 76.7(a)(1), <i>supra</i> , at 1. 5) Oppositions and replies are governed by the FCC's general rules of procedure, see §§ 1.41-1.52.			
§ 76.910 Franchising Authority Certification	Petition allows local franchising authority ("LFA") to request certification which authorizes it to regulate cable rates.	Petition may be filed at any time.	1) LFA files certification form. 2) Must send a copy to cable ops it seeks to regulate. 3) The certification becomes effective in 30 days after <u>filing</u> unless the FCC notifies LFA that it failed to meet statutory requirements. 4) Cable op may challenge LFAs certification by filing a petition for reconsideration, § 76.911 (see next	1) Filing is accomplished by either sending the certification registered mail, return receipt, or hand delivering it to the FCC. 2) The date on the return receipt or on the stamped filed copy is the date on which it is filed--this begins the 30 day countdown to effectiveness. 3) A copy of the certification form must be sent to the	LFA must certify that: 1) it will adopt and administer regulations re: basic service that are consistent with FCC's regulations; 2) it has legal authority to adopt and the personnel to administer regulations; 3) procedural laws and regulations provide a reasonable opportunity for consideration of interested parties'	Burden is on LFA to make required certification. Once it does so, however, the burden is on the cable op to challenge.	1) Even after certification, LFA may not regulate unless it adopts regulations consistent with FCC rules. 2) In addition, LFA must provide interested parties with an opportunity to have their views considered within 120 days of certification.

Type of Petition/Rule Number	Purpose of Rule	Time Period to File a Complaint/ Petition	Pleading Cycle	Pleading and Service Requirements	Affidavit and Evidentiary Requirements	Burden of Proof	Special Requirements/Other Comments
			entry below).	cable op before or on the same day the certificate is filed.	views, <u>see</u> 47 U.S.C. § 543(a)(3); and 4) cable system is not subject to effective competition ("Eff Comp")--LFA may rely on presumption against Eff Comp, <u>see</u> § 76.906.		
§ 76.911 Petition for Reconsideration of Certification	Petition allows a cable op to challenge the certification of an LFA.		1) Petition filed. 2) Oppositions must be filed w/in 10 days after the petition is <u>filed</u> . 3) Petitioner may reply w/in 7 days after last day for filing oppositions.	1) Petition may allege either that cable op is subject to Eff Comp, or that LFA did not meet requirements for certification in § 76.910 and 47 U.S.C. § 543(a)(3). 2) Must state with particularity the reason FCC's actions should be changed. 3) Must state specifically the relief sought. 4) Must cite the findings of fact or conclusions of law that petitioner believes are erroneous. 5) Petition, Oppositions, and Replies must be served on interested parties.		Burden is on cable op to prove Eff Comp and to allege failure of LFA to meet requirements.	1) Petitions for reconsideration are governed by § 1.106 with a slight modification. The Petition must be filed within 30 days "from the 30th day after the certification was filed with the [FCC]." <u>First Report and Order</u> . 2) To prove Eff Comp, cable op can request information from competitors re: reach and number of subscribers. 3) Competitor must respond to such a request within 15 days. 4) Filing of petition based on Eff Comp automatically stays rate regulation. 5) Petition based on failure to meet certification requirements may request stay.

Type of Petition/Rule Number	Purpose of Rule	Time Period to File a Complaint/ Petition	Pleading Cycle	Pleading and Service Requirements	Affidavit and Evidentiary Requirements	Burden of Proof	Special Requirements/Other Comments
				Petitions are filed pursuant to § 1.106, which incorporates filing requirements of §§ 1.49, 1.51, and 1.52--relating to brief length and verification requirements.			
§ 76.914 Petition for Revocation of Certification	Petition allows party to request FCC to revoke LFA's certification.	Filed at any time when evidentiary showing can be made.	1) Petitioner files. 2) LFA may file opposition within 30 days of petition's <u>filing</u> . 3) Reply to opposition can be made within 15 days of opposition's filing.	No petition specifics are mentioned in § 76.914. Part 1 rules allow parties to informally request the FCC for action by petition. Petitions must set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions request is based on, and the interest of the person submitting the request. Petitions must be served on the LFA pursuant to § 1.47. See "Special Requirements/ Other Comments" column of § 76.7(a)(1), <u>supra</u> .	Petitioner must show that: 1) State and local laws are in substantial and material conflict with FCC's rules--LFA must be given an opportunity to comment; or 2) After opportunity to cure a defect, LFA failed to fulfill: a) one of the three statutory prerequisites to certification--see 47 U.S.C. § 543(a)(3); or b) any provisions of § 76.910(b).	Burden is on petitioner when revocation occurs by petition.	Rates stay regulated while a petition for revocation is pending, unlike the case of a petition for reconsideration under § 76.911.

Type of Petition/Rule Number	Purpose of Rule	Time Period to File a Complaint/ Petition	Pleading Cycle	Pleading and Service Requirements	Affidavit and Evidentiary Requirements	Burden of Proof	Special Requirements/Other Comments
				at 1, and must contain a statement that service was made.			
§ 76.915 Petition for Change in Status of Cable Operator	Petition allows a cable op to prove it is subject to Eff Comp. This petition normally is filed with the LFA but where no LFA is certified, then it is filed with the FCC.	Petition may be filed at any time when cable op believes it is subject to effective competition.	1) Petitioner files. 2) FCC issues a public notice. 3) Oppositions must be filed within 15 days of issuance of the <u>public notice</u> . 4) Replies may be filed within 7 days of opposition's filing. 5) If petition is filed with LFA, petition must be decided within 30 days after pleading cycle. 6) If petition is filed w/LFA, then the LFA must notify the FCC of a change in status within 10 days of the decision. Unless FCC receives opposition to the change in status, the change becomes final 30 days after decision of LFA.	§ 76.915 does not impose specific pleading obligations. Part 1 rules require that petitions set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions on which request is based, and the interest of the person submitting the request. Any oppositions that are filed must be served on the cable op pursuant to § 1.47. See "Special Requirements/Other Comments" column of § 76.7(a)(1), <u>supra</u> , at 1.	§ 76.915 does not specifically impose evidentiary requirements. In order to prove Eff Comp, however, the cable op will need to submit sufficient evidence, supported by an affidavit, to establish that it meets one of the tests in § 76.905(b).	Burden of proof is on the cable op to show Eff Comp.	1) LFA and cable op can file a joint statement that Eff Comp exists. 2) Statement must state how Eff Comp exists. 3) Statement will be final within 30 days of filing with the FCC unless challenged. 4) Cable op denied petition at LFA can file petition for revocation with FCC under § 76.914.
§ 76.916 Petition for Recertification	Allows an LFA to petition for recertification if its original petition was	Petitions for recertification may be filed any time after certification has been denied or	1) Petitioner files. 2) Oppositions may be filed within 15 days after the petition is <u>filed</u> .	Petition must: 1) include a copy of denial or revocation of original certification;	Petitioner must: 1) make a clear showing, supported by either objectively verifiable data or affidavit, that the	Petitioner, LFA, has burden of proof.	